



MEMO ENDORSED

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November 22, 2023

VIA ECF and Email: Failla NYSDChambers@nysd.uscourts.gov

Honorable Katherine Polk Failla
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: *Andrew Mason v. City of New York et al.*, 23-CV-00029 (KPF)

Your Honor:

I am a Senior Counsel in the Office of the Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, and attorney for the City of New York, Vincent N. Schiraldi, and Kenneth Stukes (“Defendants”) in the above referenced matter. I write to respectfully request that the Court, *sua sponte*, enlarge the time for defendants Frances Espejo and Cenia Figueroa to answer or otherwise respond to the complaint from November 22, 2023 to December 8, 2023. In addition, for the reasons set forth below, the parties jointly respectfully request the Court’s guidance and clarification regarding Your Honor’s October 24, 2023 Minute Entry. This is the first request that the Court *sua sponte* enlarge the time for Defendants Espejo and Figueroa to respond to the Amended Complaint and plaintiff’s counsel, Adam Strychaluk, consents to this request.

With respect to the first request, it is respectfully requested that the Court *sua sponte* extend the time for Defendants Espejo and Figueroa to respond to the complaint as this Office needs additional time to resolve representation with these officers. These officers were recently served on November 8, 2023, and therefore, they were just joined in this case. The brief enlargement of time to December 8, 2023 should be sufficient to resolve representation with defendants Espejo and Frances and thereafter provide a response to the complaint.

With respect to the parties request for guidance from the Court as to the October 24, 2023 minute entry, as Your Honor may recall, the parties attended a discovery conference on October 24, 2023 where plaintiff’s motion to compel was discussed as well as defendants’ motion for bifurcation of *Monell*. At the conference, it was counsel for both parties’ understanding that, in

granting plaintiff's motion to compel, defendants were provided thirty days to produce certain documents, until November 23, 2023, and that discovery was extended an additional thirty days after that, to December 23, 2023. On November 8, 2023, however, the Court entered a Minute Entry from the October 24, 2023 Court conference, which states that "[f]act discovery is extended to November 21, 2023[.]" Moreover, on November 17, 2023, Defendants moved to reconsider the Court's denial of Defendants' motion to bifurcate *Monell* discovery and further clarified the broadness of the Monell discovery demands plaintiff served, which the undersigned did not articulate at the October 24 conference. *ECF No. 54*. In that application, with respect to plaintiff's discovery demands and defendants' ordered responses, defendants requested for the Court to reconsider the scope of discovery defendants are required to produce. In response to defendants' motion for reconsideration, the Court issued an order stating "[t]he Court, however, appreciates this opportunity to clarify the scope of Monell discovery contemplated in this matter" and "it is the Court's understanding that the alleged issue for which Monell discovery was warranted was the policy regarding housing violent and non-violent inmates together" and accordingly ordered Plaintiff to "narrowly tailor the discovery requests to conform to the Court's specification." No deadline for this clarification was specified in the Court's order and Plaintiff's position is indicated below. Moreover, the undersigned seeks clarification if this new ruling now obviates defendants' need to respond to the prior demands as plaintiff is required to reserve demands that are narrowly tailored.

Finally, as your honor is aware, on November 21, 2023, plaintiff moved for additional time to respond to defendants' motion for reconsideration, which is currently pending before the Court. As this time, it is unclear how Plaintiff responding to defendants' motion for reconsideration affects the current status of discovery. For example, it is unclear if the parties should go forward with discovery, namely Plaintiff providing Defendants with narrowly tailored discovery requests or if the parties should await a further ruling from the Court after Plaintiff has responded to Defendants motion for reconsideration. As a result, the parties are requesting guidance and clarification as to (1) the date when discovery is currently scheduled to close; (2) when Plaintiff is to reserve narrowly tailored discovery responses; and (3) whether the parties should await further ruling from the Court until after Plaintiff has responded to Defendants' motion for reconsideration before proceeding with this narrowly tailored discovery.

The following is included on behalf of Plaintiff, Plaintiff's position is as follows: Plaintiff consents to an extension until December 8, 2023 for Defendants Espejo and Figueroa to respond to his amended complaint, but objects to Defendants re-arguing the *Monell* issue for the third time before Plaintiff has had an opportunity to respond to Defendants' letter motion for reconsideration for the reasons discussed in Plaintiff's November 21, 2023 letter. Plaintiff is preparing his response to Defendants' letter motion for reconsideration addressing the pending *Monell* issues and requests that the Court withhold further orders on the issue until Plaintiff has had the opportunity to be heard on the matter.

Accordingly, it is respectfully requested that the Court grant the within request to enlarge the time for defendants Espejo and Figueroa to respond to the Amended Complaint until December 8, 2013. In addition, the parties respectfully request guidance and clarification as to when discovery is currently scheduled to close and the Court's recent discovery orders.

Thank you for your consideration of the instant application.

Respectfully submitted,

Thomas Lai s/

Thomas Lai

Senior Counsel

Special Federal Litigation Division

To: VIA ECF

Joshua Samuel Moskovitz

Jason Louis Leventhal

Attorneys for Plaintiff

The Court is in receipt of the parties' letters concerning recent discovery orders as well as Defendants' request for an extension to answer or otherwise respond to the complaint. (Dkt. #64, 65).

First, Plaintiff requests an opportunity to respond to Defendants' November 7, 2023 letter motion for reconsideration. The Court hereby GRANTS Plaintiff's request. It is unfortunate that the parties' negotiated extension for Plaintiff's response was not included in Defendants' November 9, 2023 motion for an extension of time. Nonetheless, the Court will allow Plaintiff to respond. Accordingly, the Court hereby VACATES its November 17, 2023 Order. The Plaintiff shall file its response on or before **December 1, 2023**.

In accordance with the above, the Court hereby STAYS discovery pending its determination of Defendants' November 7, 2023 reconsideration motion.

Second, Defendants' request an extension for Defendants Frances Espejo and Cenia Figueroa to answer or otherwise respond to the complaint. The Court hereby GRANTS Defendants' request. Defendants Frances Espejo and Cenia Figueroa shall answer or otherwise respond to the complaint on or before **December 8, 2023**.

The Clerk of the Court is directed to terminate the pending motions at docket number 64 and 65.

Dated: November 28, 2023
New York, New York

SO ORDERED.

